UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

Randall Industries, Inc.[1]

Employer

and Case 13-RC-21320

International Union of Operating Engineers, Local 150

Petitioner

and

National Production Workers Union, Local 707

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.[2]

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[1] The names of the parties appear as amended at the hearing. At the hearing, the Employer amended its name to Randall Industries, Inc. The Petitioner objected to the amended name and took the position that Randall Rents of Indiana was the correct corporate name of the Employer. The evidence presented by Local 150 shows that in the past the Portage facility may have operated under a different name than the Elmhurst facility. However, the Employer presented evidence that it was in the process of merging the Portage and Elmhurst facilities into one corporate entity. It is also noted that the contract between Local 707 and the Employer listed Randall Industries, Inc. as the correct legal entity. Therefore, I find that Employer's name should be Randall Industries, Inc. as amended at the hearing. The Intervenor did not object to the Employer's amended name.

[2] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

I. Issues

The Petitioner, Local 150, seeks an election in the following unit: all full time and regular part time heavy equipment field mechanics, shop mechanics, truck drivers and yard workers employed by the employer at its facility located in Portage, Indiana; excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined by the Act.

The Employer asserts that the petitioned for unit is inappropriate for the purposes of collective-bargaining for the following reasons: (1) the employees in the proposed unit are already represented by a collective bargaining agreement between the Employer and the Intervenor, Local 707, therefore, the contract bar rule applies;[3] (2) the proposed single facility unit is inappropriate because of bargaining history been Local 707 and the Employer; (3) the appropriate unit includes five employees at Portage and ten at Elmhurst, including an employee named Kevin Boezeman who works at the Portage facility. The Intervenor also contends that the bargaining history dictates that the petitioned for single facility unit is inappropriate.

The Petitioner contends that single facility unit as indicated on the petition is appropriate and would consist of two truck drivers and two mechanics, but would exclude Kevin Boezeman because he does not share a community of interest with the bargaining unit employees.

II. Decision

For the reasons discussed in detail below, I find there is a historical, multilocation unit established by a Board certification and further demonstrated by a collective-bargaining agreement between the Employer and the Intervenor. The Petitioner has failed in its burden to show compelling circumstances which would warrant disturbing the parties' existing historical, mulitlocation bargaining unit. However, because the Petitioner stated on the record that they wish to proceed with an election in any unit found appropriate, I order an election in the historical, multilocation unit encompassing both the Portage and Elmhurst facilities. I find that employee Kevin Boezeman should be allowed to vote under challenged ballot.

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[3] The evidence shows that the collective bargaining agreement in question expires on May 31, 2005. Thus, this petition was clearly filed within the window period. Therefore, I find that the contract between the Employer and Local 707 does not serve as a contract bar to this petition. In its brief, the Employer also relies on *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966) in arguing against the imposition of a single facility unit. However, *Mallinckrodt* does not apply to the instant case as it concerns the severance of craft employees from a production and maintenance unit. This is clearly not applicable to this petition.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit, contingent on the Petitioner's submitting sufficient showing of interest:[4]

All full-time and regular part-time heavy equipment field mechanics, shop mechanics, truck drivers and yard workers employed by the Employer at its facilities currently located in Elmhurst, Illinois and Portage, Indiana; excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

III. Facts and Analysis

In determining the appropriateness of a bargaining unit, prior bargaining history is given substantial weight. As a general rule, the Board is reluctant to disturb a unit established by collective bargaining which is not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act. *Met Electrical Testing Co.*, 331 NLRB 872 (2000); *Red Coats, Inc.*, 329 NLRB 205 (1999). The party challenging a historical multi-location unit as no longer appropriate has a heavy evidentiary burden to demonstrate compelling circumstances to warrant disturbing the unit. *Met Electrical Testing*, 331 NLRB at 872; *Trident Seafoods, Inc.*, 318 NLRB 738 (1995); *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board has applied these principles not only to decertification petitions, but to representation petitions as well. In balancing the goals of employees' free choice and bargaining stability, the Board has determined that even a 1-year bargaining history on a multiplant basis can be sufficient to bar a petition seeking an election in a segment of the unit. See *Arrow Uniform Rental*, 300 NLRB 246 (1990).

The National Production Workers Union, Local 707 was certified in Case 13-RC-20753 as the bargaining representative on November 20, 2002. All the parties to that case, including Local 150, stipulated to a combined unit including employees from both the Portage and Elmhurst facilities.

The Employer is engaged in the business of construction equipment sales, rental, and service. The Portage, Indiana, facility has two drivers, two mechanics and an employee named Kevin Boezeman whose eligibility is in question. At the Portage facility, Kerry Orrock is the operations managers and general manager of the facility. At the Elmhurst facility, Randy Truckenbrodt is the general manager. There are ten employees at the Elmhurst facility. I take judicial notice that the Portage and Elmhurst facilities are located 56.64 miles apart. Randy Truckenbrodt testified that the accountants were in the process of merging Randall Rents of Indiana and Randall Industries, Inc., located in Elmhurst, Illinois, into one company. Until recently, the Portage and Elmhurst facilities were run as completely separate corporate entities. Truckenbrodt testified that as of the date of the hearing the merger had not been complete, but was progressing.

[4] Because the unit herein is broader than the petitioned- for unit, the Petitioner will be given 14 days to secure an additional showing of interest.

The record shows that Kerry Orrock is in charge of daily operations of the Portage facility. He is the highest management official and reports directly to Truckenbrodt. Orrock makes all work assignments, approves vacation, sick, personal time off for the employees employed at the Portage facility. There is no common seniority list maintained between the two facilities. Orrock maintains the timecards for the Portage employees, and sends the information to the Elmhurst facility for processing. Truckenbrodt signs all the payroll checks. At the beginning of this year, the payroll checks distributed to the Portage facility employees changed from Randall Rents of Indiana to Randall Industries, Inc. It appears the Local 707 contact is applied to the employees employed at the Portage facility, especially in terms of wages.

The evidence shows that the facilities rent equipment to each other when one of their respective customers requires a piece of machinery that in not in the local fleet. According to the Truckenbrodt the companies have always paid each other for the rentals and continue to do so. The Portage employees have been instructed to place stickers with the Portage telephone number on the machinery that they pick up from Elmhurst. Truckenbrodt acknowledges that each facility owns its fleet of machinery, but that will change after the merger is complete. Truckenbrodt also admitted that the facilities do not normally share customers.

Local 150's argument for single facility unit is predicated on the presumption that a single entity bargaining unit is appropriate and that it is the Employer's burden to overcome the presumption. While Local 150's argument would be correct absent any bargaining history, as discussed above, when there a history of bargaining between the parties, it is the party challenging the appropriateness of the bargaining unit to show there are compelling reasons to ignore such history. In this case, Local 150 has failed to meet its burden to show that the parties' bargaining history should be discounted.

The entire case presented by Operated Local 150 is based on the fact that the Elmhurst facility and the Portage facility have operated as separate entities for years. However, the Board specifically rejected a similar argument in *Met Electrical Testing Co.,* supra. There the Board found the factors relied on by the Regional Director such as geographical separation, local autonomy, and limited interaction did not constitute evidence of "compelling circumstances" that would warrant disturbing the parties' historical, multiplant unit. *Id.* at 872. While the evidence presented by Local 150 may demonstrate that a single facility may be an appropriate unit, the evidence itself does not rise to the level that would constitute the required "compelling circumstances" that would warrant disturbing the historical bargaining unit encompassing both the Elmhurst and Portage facilities. [5]

Accordingly, I find there is a historical, multifacility bargaining unit established by a Board certification with a bargaining history as demonstrated by a current collective bargaining agreement. The Petitioner has failed to demonstrate any compelling circumstances which would warrant disturbing this historical bargaining unit. Therefore, I find the petition for single facility bargaining unit at Portage is inappropriate; thus, I order an election to be conducted in the historical, multiplant unit.

It appears from the record that Kevin Boezeman is a mechanic employed by the Employer at its Portage facility. There is no record evidence that Boezeman has any supervisory indicia. From the record, it appears that Boezeman is a residual employee from a former entity owned by Truckenbrodt and should be included in the historical, multi-location bargaining unit. However the evidence is insufficient to allow me to make a determination as to his inclusion in the unit. Therefore, I find that Boezeman should be allowed to vote in the election, but that his vote should be cast as a challenged ballot. There are approximately 15 employees in the unit found appropriate herein.

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Operating Engineers, Local 150; National Production Workers Union, Local 707; or no labor organization.**

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

In order to assure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.[4]

In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois, 60606 on or before **April 20, 2005.** No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile, in transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized at each location.

If you have any questions, please contact the Regional Offices.

VIII. Right to Request Review

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Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **April 27, 2005.**

DATED at Chicago, Illinois this 13th day April of 2005.

/s/Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS — Unit- single facility, historical bargaining unit

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